

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TESSERON, LTD.,

Plaintiff,

VS.

R.R. DONNELLEY & SONS CO.,

Defendant.

CASE NO. 1:06CV2909

JUDGE CHRISTOPHER A. BOYKO

ORDER

CHRISTOPHER A. BOYKO, J.:

This matter comes before the Court upon the Joint Filing Regarding Dispute Over R.R. Donnelley & Sons Company's Identified Claim Terms (ECF DKT #92 - under seal). Pursuant to the Amended Case Management Order, the parties were required, by March 4, 2008, to submit a joint claims construction chart to the Court, identifying areas of agreement and areas of dispute. In anticipation of the submission, the parties agreed to exchange claim terms and proposed constructions. Tesseron allegedly sent a list of seven claim terms; and Donnelley allegedly sent a list of one hundred forty-seven claim terms.

Tesseron maintains the issue is whether it is unduly burdensome for the Court to construe this large number of terms. Tesseron, moreover, asserts Donnelley is acting vexatiously and

asks the Court for assistance. For its part, Donnelley believes the problem is of Tesson's own making. Donnelley asks the Court to decline to become involved in the parties' agreed process.

The captioned case has been pending for fifteen months. At least two discovery disputes have been referred to the Magistrate Judge for resolution. The deadlines in the Case Management Order were extended by the Court on December 18, 2007. An extensive schedule was outlined at that time, including a Settlement Conference set for March 19, 2008. Now, with deadlines looming, the parties are unable to reach an agreement on precisely what claims terms and phrases require the Court's construction.

The parties have an obligation to work cooperatively to place clear issues before the Court for determination. Therefore, counsel for Tesson and R.R. Donnelley shall meet and confer in person and submit the joint claims construction chart by April 4, 2008, or the Court will appoint a Special Master for this litigation, at equal cost to Plaintiff and Defendant.

IT IS SO ORDERED.

DATE: August 8, 2008

S/Christopher A. Boyko
CHRISTOPHER A. BOYKO
United States District Judge